# In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 466

MRS. CAROLYN M. ABNEY, ET VIR, JAMES K. ABNEY,
PETITIONERS

*v.*

ELLIS CAMPBELL, JR., COLLECTOR OF INTERNAL REVENUE FOR THE SECOND COLLECTION DISTRICT OF TEXAS

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The opinion of the District Court (R. 30–33) is reported at 105 F. Supp. 740. The opinion of the Court of Appeals (R. 38–48) is reported at 206 F. 2d 836.

### JURISDICTION

The judgment of the Court of Appeals was entered on August 18, 1953 (R. 48). The petition for a writ of certiorari was filed on November 13, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

## QUESTION PRESENTED

Whether the imposition of taxes with respect to domestic employment, under the Federal Insurance Contributions Act, is constitutional.

## CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The pertinent provisions of the Constitution and the Internal Revenue Code are set forth in the Appendix, *infra*, pp. 10–14.

## STATEMENT

This is an action attacking the constitutionality of the Federal Contributions Insurance Act, which, as amended in 1950, imposes taxes with respect to domestic service in private homes.

The undisputed facts[1] may be stated briefly as follows:

The taxpayers, husband and wife, residents of Texas, during the first quarter of the calendar year 1951 paid to an employee, for domestic service in their private home, cash wages in an amount and for a period of time sufficient to render them liable for a tax in the amount of $2.51[2] under the Federal Insurance Contributions Act. For the

[1] The facts were developed entirely by the pleadings of the parties (R. 1–12, 12–15, 15–24) and admissions made at the trial in the District Court (R. 25–29).

[2] Actually, the taxes assessed with respect to the wages paid during the first quarter aggregated $4.68—which included both the additional income tax on the employee, under Section 1400 of the Internal Revenue Code, and the excise tax on the employer, under Section 1410—and, although the taxpayers had not withheld the tax on the em-

second and third quarters of 1951, the taxpayers paid to the employee, for domestic service in their private home, wages in an amount and for a period sufficient to render them liable for taxes aggregating $10.06[3] under the Act (R. 16, 18).

The taxpayers, although reporting the amount of wages paid for those three quarters of 1951, did not pay those sums of $2.51 and $10.06 (R. 16–17, 18). Following notice and demand, those sums were subsequently seized from the taxpayers' bank account.[4]

After the denial of the taxpayers' claims for refund (R. 3–4, 9–12, 19), recovery of those sums was sought in this action (R. 1–12, 15–24). Upon a trial on the merits[5] to the District Court without a jury (R. 34), a judgment in favor of the Collector followed (R. 33, 34). The Court of Appeals for the Fifth Circuit unanimously affirmed (R. 38–48).

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ployee, the latter had paid that tax herself. Thus, with respect to the first quarter of 1951, there was left unpaid a total $2.51, for tax, interest and penalty. (R. 3, 13, 16–17.) The correctness of that amount is not challenged (cf. Pet. 3).

[3] This sum included both the excise tax on the employers and the additional tax on the employee required to be withheld by the employers (R. 18), and this entire amount was admittedly payable by the taxpayers, since the employee did not herself pay any of the additional income tax with respect to her wages for the second and third quarters (cf. Pet. 3).

[4] There is no question with respect to the propriety of the manner in which collection was effected (Pet. 4).

[5] No technical defense of any type was interposed by the Collector (R. 25–28).

ARGUMENT

The Social Security Act Amendments of 1950, c. 809, 64 Stat. 477, amended the Federal Insurance Contributions Act (Internal Revenue Code, Section 1400, *et seq.*), so as to impose, with respect to domestic service in private homes, an additional income tax on employees (Section 1400, Appendix, *infra*, p. 11), to be withheld by the employer from the employee's wages (Section 1401, Appendix, *infra*, pp. 11–12), and an excise tax upon the employer (Section 1410, Appendix, *infra*, p. 12). The only question presented in this case is the constitutionality of the taxes imposed under that amendment.

Originating in the Social Security Act of 1935, the law which is now known as the Federal Insurance Contributions Act—and which, before the 1950 amendments, exempted domestic service in private homes[6]—was upheld as valid by this Court in *Steward Machine Co.* v. *Davis*, 301 U. S. 548, and *Helvering* v. *Davis*, 301 U. S. 619. A complete answer to all of the contentions made in support of the attack upon the taxes in this case is to be found, either expressly or implicitly, in the decisions of this Court in those two cases.[7] Accordingly, both courts below were clearly cor-

[6] See Section 1426 (b) (2), and footnote thereto (Appendix, *infra*, pp. 13–14).

[7] The court below agreed that the precise questions presented here have been "in substance" decided against the taxpayers—though not "in *haec verba*" (R. 43).

rect in holding that the same fundamental principles sustained both the taxes in those cases and the taxes here.

A detailed analysis of the contentions urged here as reasons for granting the writ (Pet. 5–21) would clearly be unwarranted, particularly in view of the thorough consideration thereof in the opinion of the Court of Appeals (R. 38–48).[8] We shall therefore confine ourselves to a brief examination of those contentions.

1. The first argument (Pet. 5, 7–11) is to the effect that the tax imposed upon employers of domestic servants is not a lawful excise tax, but a direct tax in contravention of Section 9, Article I, of the Constitution (Appendix, *infra*, p. 10). The contention rests upon the erroneous premise that an excise tax upon the relation of employment must, to be valid constitutionally, be limited to employment in the operation of a business—a theory thoroughly refuted by this Court, which, in the *Steward Machine* case, pointed to ancient precedents, beginning as early as the eighteenth century, of statutes imposing excise taxes upon employers of domestic servants. See 301 U. S. at 579–580.

This contention of the taxpayers is not aided by the further argument (Pet. 10–11) that, unlike business employers, domestic employers are not

[8] In addition to passing upon those contentions which are repeated here, the court below in its opinion also disposed of other arguments, not repeated here (R. 41, 46).

permitted income tax deductions for wages paid to a domestic servant, for excise taxes thereon, or for the cost of keeping records and making reports. The granting of income tax deductions is a matter of legislative grace (*New Colonial Co.* v. *Helvering,* 292 U. S. 435), and the failure of Congress to allow such deductions to domestic employers does not affect the constitutionality of the tax.

2. The contention that the law is unconstitutional because, allegedly, it is arbitrary and discriminatory with respect to wages which are taxed and wages which are not taxed is likewise wholly unfounded. While various aspects of the powers of Congress are indeed conceded in connection with this point (Pet. 5, 11–16), the particular claim of invalidity seems to rest upon the fact that Congress has adopted a definition based upon a combination of both the amount of cash wages paid and the number of days on which domestic service is performed.

Far from being arbitrary or discriminatory, the classification adopted by Congress readily appears as one reasonably measured to carry out its intent to cover domestic service under the law, while at the same time limited so as to avoid obvious difficulties in the administration of the law. Congress acted well within its prerogatives of classification and selection, and indeed it may well be said here, as this Court said in the *Steward Machine* case (301 U. S. at 584),

that the classifications "have support in considerations of policy and practical convenience that cannot be condemned as arbitrary."

Congress, in the exercise of the taxing power, has broad powers of classification and selection. See *Sonzinsky* v. *United States,* 300 U. S. 506. Results in the application of a tax, due to fortuitous circumstances and the peculiar circumstances in which some persons may be situated, are not invalid where it appears that those persons are not singled out for special treatment and are not treated by a method which is not uniformly applied to others in the same class. See *Illinois Cent. R. Co.* v. *Minnesota,* 309 U. S. 157, 163, and *Rapid Transit Corp.* v. *New York,* 303 U. S. 573, 578–584; see also *Oliver Iron Co.* v. *Lord,* 262 U. S. 172, 179. Here, all employers of domestic servants in the same class as the taxpayers—*i. e.,* all having regularly employed domestic servants, to whom cash wages of $50 or more per quarter are paid, for services on at least twenty-four days during the quarter—are taxed in the same manner.

There is clearly no violation of the Fifth Amendment (Pet. 16). See *Steward Machine Co.* v. *Davis, supra,* at 583–585. See also *Brushaber* v. *Union Pac. R. R.,* 240 U. S. 1, 24–26. The due process clause of the Fifth Amendment is applicable to a taxing statute only if it "be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but